

TRADEMARKS

*Exchange of notes at Washington April 27 and May 14, 1883
Entered into force May 14, 1883*

Treaty Series 471

The Swiss Minister to the Secretary of State

SWISS LEGATION
WASHINGTON, April 27, 1883

*To the Ministry of Foreign Affairs
Washington*

MR. SECRETARY OF STATE: The undersigned, Minister of the Swiss Confederation, has this day had the honor to receive your note of the 24th instant, whereby you had the kindness to acquaint him with your views concerning an exchange of declarations between the United States and the Swiss Confederation, relative to the mutual protection of trade-marks.

The undersigned sees by the aforesaid note that you would prefer to make such an arrangement between the United States and Switzerland in the form of an exchange of notes, inasmuch as that form appears to you to be the most simple, and the best calculated to avoid the difficulties connected with the ratification of a declaration or a convention.

The undersigned has the honor to reply that, for his part, he attaches no special importance to the form of the arrangement, and that he thinks he may say that his Government likewise favors the method proposed by you. In fact, the undersigned, by a communication of the 6th of March last, laid before the Federal Council the text of your note of the 5th of that month, and, at the same time, he proposed to try an exchange of declarations, which, as regards the form, would coincide with your views. The Federal Council having consented thereto by its communication of March 30th, and having instructed the undersigned, with full powers, to make such an arrangement, the undersigned thinks that he represents the intentions of his Government by giving his adhesion to an exchange of notes.

As regards the question whether the principle of reciprocity is embodied in the Federal law of December 19, 1879, the undersigned has the honor to invite your attention to the text of Article 7, paragraph 2, of the Federal Law of December 19, 1879, and also to the contents of the message of the

Federal Council relative thereto. In the aforesaid paragraph of the law of December 19, 1879, it is expressly provided that producers and merchants, whose business is carried on in a state *which accords the right of reciprocity to Swiss citizens*, may have their marks registered in the same manner as Swiss citizens. But one condition is added, viz., that foreigners shall be obliged to prove that these marks are *already* protected in the State to which they belong, the sole object of which reservation is to prevent foreigners from depositing, with fraudulent intent, under the protection of reciprocity, marks for which they cannot claim protection in their own country. The Federal Council, moreover, in its message of October 13, 1879, whereby it transmitted to the Federal Chambers a bill for the protection of trade-marks, made the following declaration touching trade-marks: "As regards foreign trade-marks we are of opinion *that Switzerland should stand upon the ground of reciprocity*, and that this is the only position that should be taken by us in the interest of our industry."

In view of this declaration, the Federal Chambers, in accepting, without material modification, the aforesaid paragraph 2 of Article 7 of the law in question, were without doubt actuated by a desire to embody the principle of full reciprocity in the law.

The undersigned takes the liberty, in conclusion, to ask your attention to the fact that the confederation has, since the promulgation of the aforesaid law, concluded a convention with various States for the protection of trade-marks upon the basis of reciprocity; for instance, with Great Britain, Belgium and the Netherlands; and that the Confederation, previously to the promulgation of that law, guaranteed, in its commercial treaties with France, Germany and Italy, protection in Switzerland for their trade-marks to the citizens or subjects of those States.

The undersigned thinks that he has, by the foregoing, furnished proof that the Confederation recognizes the principles of reciprocity, as regards the international protection of trade-marks, as an integral part of its public law, and that the United States may, with the most perfect confidence, enter into such an arrangement with the Confederation.

The undersigned gladly awaits a kind reply from you, and he avails himself of this occasion to renew to you, Mr. Secretary of State, the assurance of his very distinguished consideration.

E. FREY

The Acting Secretary of State to the Swiss Minister

DEPARTMENT OF STATE
WASHINGTON, May 14, 1883

Colonel FREY,
Etc., etc., etc.

COLONEL: I have the honor to acknowledge the receipt of your note of the 27th instant [April 27], concerning the reciprocal privilege of trade-marks registration in the United States and Switzerland. It gives me much pleasure to accept your declaration as evidence that the law of Switzerland affords such a guarantee of reciprocity in the matter as will make the application of the privileges of the Act of Congress of March 3, 1881,¹ to owners of trade-marks in Switzerland proper and certain.

This exchange of notes accomplishes the end in view, of securing complete reciprocity under the legislation of the respective countries, and I have therefore communicated your note to the Secretary of the Interior, with this reply, and requested him to make the necessary regulation for admitting Swiss trade-marks to all the privileges of registration, which under that act pertain to the trade-marks of American origin.

Now that the immediate object of our late correspondence on the subject is attained, permit me to suggest that, with a view to rendering the engagements of this Government with foreign nations as uniform as possible, the Government would be pleased to conclude and sign with you, a formal trade-mark convention, similar to that lately concluded with Spain, to which I have before referred and of which I enclose a printed copy herewith.² Our present diplomatic accord will, of course, hold good, until such formal convention can be made effective by ratification and exchange.

Accept, Colonel, etc.,

JOHN DAVIS
Acting Secretary

¹ 21 Stat. 502.

² Convention of June 19, 1882 (TS 333, *ante*, p. 563, SPAIN).